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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

TENGFEI LONG

Case No.:

Plaintiff

COMPLAINT

Against

UNITED STATES CITIZENSHIP
AND IMMIGRATION SERVICES,

Defendant

DESCRIPTION OF ACTION

1. This is an action brought by Tengfei Long against the United States Citizenship And Immigration Services (USCIS) to compel a decision on an unreasonably delayed request for immigration benefits.

JURISDICTION

2. This being a civil action against the United States arising under the
Mandamus Act, 28 U.S.C. § 1361, and the Administrative Procedure Act, 5

1 U.S.C. § 701 et seq., both laws of the United States, original jurisdiction over
2 this matter is vested in this Court by 28 U.S.C. § 1331.
3

4 **DESCRIPTION OF PARTIES**

5 3. Tengfei Long is a citizen and national of China, lawfully residing in Oakland
6 County, Michigan. His A number is 219626468.
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8 4. USCIS is an agency of the United States, within the Department of Homeland
9 Security, to which the authority to for adjusting the status of noncitizens in the
10 United States to permanent resident has been delegated. It resides in the
11 District of Columbia and the state of Maryland.
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13 **BRIEF STATEMENT OF RELEVANT FACTS**

14 5. On October 2, 2020, Tengfei Long filed a Form I-485, Application for Adjustment
15 of Status, to adjust his U.S. immigration status to alien lawfully admitted for
16 permanent residence (permanent resident) as the derivative of his wife's
17 employment based application. His application was assigned File No.
18 MSC2190137616 and his USCIS A number is 219626468.
19

20 6. Although his wife's application has been approved, Mr. Long's continues to be
21 pending with the USCIS's Detroit Field Office.
22

23 7. On Febrauar 4, 2022, USCIS sent Tengfei Longa request for certain evidence
24 pertaining to his application to which he promptly respoded.
25

26 8. Since that time despite, repeated requests, Tengfei Long has received no further
27 information pertaining to his application save that the USCIS is still working on
28 it.

- 1 9. This delay has adversely affected Mr. Long's welfare as well as his health.
- 2 10. First, given that USCIS also denied his application for advance parole, he has
- 3 suffered an inability to travel internationally.
- 4 11. This has adversely affected his welfare because since he has been able to visit
- 5 his father and any of my close relatives (20+ in total) for almost 7 years.
- 6 12. Since Mr. Long was last able to visit China, his father has developed serious
- 7 diabetes, went through a brain tumor surgery and had a severe fractured right
- 8 arm(which will only have half of the original strength for the rest of his life).
- 9 13. As his father's only son, Mr. Long wasn't able to stay by his side for any of these
- 10 difficult times.
- 11 14. Mr. Long's father just had his 60th birthday 6 months ago and again, Mr. Long
- 12 wasn't able to spend it with him.
- 13 15. Mr. Long's father applied for a B2 visa in 2016 and his application was stuck in
- 14 administrative processing for over a year before being withdrawn, so he can't visit
- 15 Mr. Long in the US either.
- 16 16. While his mother does have a B2 visa, she's not able to travel much as she needs
- 17 to look after Mr.Long's father.
- 18 17. This separation from his family in general, and particularly his inability to
- 19 assist, or even comfort his father by visiting in his time of need, substantially
- 20 impacts upon Mr. Long's personal welfare.
- 21 18. In fact, the delay in this case even adversely affects Mr. Long's health, as well as
- 22 that of his wife.
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- 1 19. The stress caused by the situation has negatively impacted Mr. Long's life.
- 2 20. There have been many times that Mr. Long felt that he needed professional help
- 3 to deal with the mental stress of waiting for a decision on his application.
- 4
- 5 21. In fact, he hasn't been able to have a single good night's sleep i the past year.
- 6 22. Every day, before going to bed and right after waking up, the concern of his
- 7 application has always been the last and first thing on Mr. Long's mind.
- 8

CAUSE OF ACTION

- 10 23. The government owes a non-discretionary duty to applicants for adjustment to
- 11 act upon their application in a reasonable time. 5 U.S.C. § 555(b).
- 12 24. It is the sense of Congress that the processing of an immigration benefit
- 13 application should be completed not later than 180 days after the initial filing
- 14 of the application. 8 U.S.C. § 1571(b).
- 16 25. Even a non-binding deadline may still be an "indication of the speed with
- 17 which" Congress 'expects the agency to proceed.' Hulli, 549 F. Supp. 3d at 101
- 18 (quoting In re United Mine Workers, 190 F.3d at 549)." Ramirez v. Blinken,
- 19 594 F. Supp. 3d 76, 94 (D.D.C. 2022).
- 21 26. The over three years which it has taken the USCIS to process Mr. Long's
- 22 application for adjustment of status is unreasonable and well beyond the 180
- 23 days that it is the sense of Congress that such application should be completed
- 24 in.
- 26 27. In determining that the delay has been sufficiently egregious to warrant the
- 27 remedy of mandamus, courts usually consider the six-factor standard—the so-
- 28

1 called "TRAC factors"—established in *Telecomms. Research and Action Ctr.*
2 (*TRAC*) v. FCC, 750 F.2d 70, 79-80, 242 U.S. App. D.C. 222 (D.C. Cir. 1984).
3
4 Those factors are as follows:

5 the time agencies take to make decisions must be governed by a rule of
6 reason; (2) where Congress has provided a timetable or other
7 indication of the speed with which it expects the agency to proceed in
8 the enabling statute, that statutory scheme may supply content for
9 this rule of reason; (3) delays that might be reasonable in the sphere of
10 economic regulation are less tolerable when human health and welfare
11 are at stake; (4) the court should consider the effect of expediting
12 delayed action on agency activities of a higher or competing priority; (5)
the court should also take into account the nature and extent of the
interests prejudiced by delay; and (6) the court need not find any
impropriety lurking behind agency lassitude in order to hold that
agency action is unreasonably delayed.

13
14 *TRAC*, 750 F.2d at 79-80 (citations and internal quotation marks omitted)

15 28. Here the rule of reason has been provided by the USCIS, which has
16 indicated that it 80% of employment based applications for adjustment of
17 status are completed in 22.5 months at its Detroit Field Office.

18 29. Since over 3 years have passed since his application has been filed, the most
19 important factor, the rule of reason, tips sharply in favor of Mr. Long

20 30. The remaining factors either also tip sharply in favor of Mr. Log, or, at worst,
21 are neutral.

22 31. Factor (2): Congress has provided an indication of the speed with which it
23 expects the agency to proceed in the enabling statute, to wit, 8 U.S.C. §
24 1571(b), providing that the processing of an immigration benefit

1 application should be completed not later than 180 days after the initial filing
2 of the application.

3 32. Inasmuch as nearly 3 years have passed since the filing of his application for
4 adjustment of status, this factor tips sharply in Mr. Long's
5 favor.

6 33. Factor (3): Mr. Long's health and welfar is very much at stake here for the
7 reasons stated above.

8 34. Factor (4): there does not appear to be any agency activities of a higher or
9 competing priority which adjudicating Mr. Long's application would affect.
10 Therefore, this factor is neutral.

11 35. Factor (5) tips sharply in favor of Mr. Long. The interest which is prejudiced
12 by delay is not merely economic but goes to Mr. Long's health and welfare as
13 discussed above.

14 36. Finally Factor (6) is neutral.

15 37. Inasmuch as 4 of the TRAC factors, including the most important one, tip
16 sharply towards Mr. Long, while the remaining are neutral, therefore
17 application of the TRAC factors here indicate that relief should be granted.

18 38. This Court has jurisdiction over any action in the nature of mandamus to
19 compel an officer or employee of the United States or any agency thereof to
20 perform a duty owed to the plaintiff. 28 U.S.C. § 1361.

21 39. Further, this Court shall compel agency action unlawfully withheld or
22 unreasonably delayed. 5 U.S.C. § 706(1).

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2 **RELIEF REQUESTED**
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5 Wherefore it is respectfully requested that the Court compel defendant
6 USCIS to issue or refuse Tengfei Long's application for adjustment of status
7 forthwith.

8 Respectfully submitted October 9, 2023.

9
10 /s/ *Michael E. Piston*
11
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